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**From:** Todd Thorn (ENV) [Todd.Thorn@colvilletribes.com]  
**Sent:** 11/8/2018 11:14:15 PM  
**To:** Wu, Jennifer [Wu.Jennifer@epa.gov]  
**Subject:** RE: 401 certification communications

Thanks Jenny! I tried Ellie again today.

Todd

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**From:** Wu, Jennifer [mailto:Wu.Jennifer@epa.gov]  
**Sent:** Thursday, November 08, 2018 2:53 PM  
**To:** Todd Thorn (ENV)  
**Subject:** RE: 401 certification communications

Hi Todd,

The latest that I've heard from phone calls with Ecology is that they plan to send us comments on the Lower Columbia dam permits early next week. This won't be a draft 401 cert, but will probably allow us to go out for public comment. I don't know their timing for comments on the Lower Snake River dams and Grand Coulee. These comments are not a draft 401 certification, however. So I believe they are going to be asking EPA for an extension to completing a draft 401 certification.

And as you probably know, this is different from the final 401 certification which we would also be requesting when we are ready to issue the permit. That is, there's another bite at the apple at the final 401 certification stage.

Re: timeline and expectations, we'd appreciate a draft 401 cert and/or comments in the next 2-4 weeks, but understand if it may take longer. If you have any thoughts on this, it would be great to talk with you. Re: cooling water, we've now been instructed by our EPA HQ to hold off on any communications on this while they are deliberating on how these cooling water intake structure provisions apply, but I will let you know as soon as I hear something. Rumors are that we may hear something by the end of the week.

If you want to talk more on anything, we can talk. Thanks! - Jenny

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**From:** Todd Thorn (ENV) <Todd.Thorn@colvilletribes.com>  
**Sent:** Thursday, November 08, 2018 2:26 PM  
**To:** Wu, Jennifer <Wu.Jennifer@epa.gov>  
**Subject:** RE: 401 certification communications

Hi Jenny,

Can you provide an update of timeline expectations or other significant discussion items from your October 24<sup>th</sup> meeting with Ecology? I'm also curious if there has been any decision to take a different approach with cooling water- I think you mentioned the possibility of this during our last phone call.

I'm currently writing the letter you suggested regarding timeline requirements associated with the preliminary draft, or draft, permit certification.

Thank you,

*Todd*

Todd Thorn  
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Ex. 6 Personal Privacy (PP) Cell

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**From:** Wu, Jennifer [<mailto:Wu.Jennifer@epa.gov>]  
**Sent:** Tuesday, October 23, 2018 4:48 PM  
**To:** Todd Thorn (ENV)  
**Cc:** Merz, Martin  
**Subject:** 401 certification communications

Hi Todd,

Here is the response letter from Ecology on our original draft 401 certification request on the WA federal dam permits and our letter that we sent this past Friday re-requesting a draft 401 certification.

- Re: CWA Section 401(a)(1) states that “If the State ... fails or refuses to act on a request for certification, within a **reasonable period of time** (which **shall not exceed one year**) after receipt of such request, the certification requirements ... shall be waived ....”
- 40 CFR § 124.53(c) further defines what the EPA has defined as a “reasonable period of time” under Section 401(a)(1). 124.53(c) states that “[i]f State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:”
  - A copy of the draft permit;
  - A statement that the EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under 124.55 or waived its right to certify; AND
  - A statement that the State will be deemed to have waived its right to certify unless that right is exercised within a specified reasonable time not to exceed 60 days from the date the draft permit is mailed unless the Regional Administrator finds that unusual circumstances require a longer period of time.

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